

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on February 5, 2001 at 9:00 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Cecile Tropila, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 195 HB 184 HB 191, 2/2/2001  
Executive Action: HB 195, HB 184, SB 17

#### **HEARING ON HB 195**

**Sponsor:** REP. MERLIN WOLERY, HD 90, HAVRE & HILL COUNTY

**Proponents:** Pam Bucy, Assistant Attorney General

**Opponents:** None

**Opening Statement by Sponsor:**

REP. MERLIN WOLERY, HD 90, HAVRE & HILL COUNTY, said this bill would add two enumerated offenses in 41-5-206 of the Montana code

that are charges against youth that could be moved to the district courts. He stated these additions would add possession of dangerous drugs and criminal possession with intent to distribute as defined in the codes. He explained an incident with a youth who was 16 and was involved with drug dealings and they could only send him to Pine Hills until he turned the age of 18, which he went back to dealing drugs in his home town, this bill would allow adult courts take action on the youth in these situations.

**Proponents' Testimony:**

**Pam Bucy, Assistant Attorney General**, stated this bill adds criminal possession in felony amounts and criminal possession with intent to distribute to crimes that juveniles can be tried as adults. She said 16 year old youths, who are in possession of drugs, are affecting younger children and this is a major concern. She added this allows the judge discretion as to whether these crimes are transferred, but these would definitely be transferred to adult court.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** asked how frequent these crimes occur and how many youth this effects. **REP. WOLERY** said he didn't have any facts, but it would be infrequent for the criminals that are dealt with in the youth court.

**SEN. GRIMES** asked what the impact of this bill would have. **Pam Bucy** said she didn't have any facts. She said it may affect 40 teens per year, and it wouldn't be terribly frequent. She mentioned with these crimes most were not able to be transferred.

**Closing by Sponsor:**

**REP. MERLIN WOLERY, HD 90, HAVRE & HILL COUNTY**, summarized the need for this bill and asked the committee for their support.

**HEARING ON SB 184**

**Sponsor:** **REP. STEVE GALLUS, HD 35, BUTTE**

**Proponents:** **Brenda Nordlund, Motor Vehicle Division**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. STEVE GALLUS, HD 35, BUTTE,** said this bill seeks to amend the Montana Criminal Justice Information Act, which provides for the collection of valuable criminal offense data and currently excludes the collection of traffic offense data. He explained by a decision of the Supreme Court, the department was found not compliant on collecting data with D.U.Is. **EXHIBIT(jus29a01)** Information on HB 184 handed out.

**Proponents' Testimony:**

**Brenda Nordlund, Motor Vehicle Division,** asked the committee to support this bill and change the Montana Criminal Justice Information Act of 1979 to allow information to be collected on D.U.I offenders or per se offenders from the time of arrest. **EXHIBIT(jus29a02)** An amendment to HB 184 was handed out. She felt this amendment should be included within the bill due to the offenses of traffic violations. She mentioned the key to collecting information would be by fingerprinting offenders.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. RIC HOLDEN** asked how the fingerprinting would take place. **Brenda Nordlund** answered when the defendant is pulled over and suspected of a D.U.I. charge they are taken in and submitted to a Breathalyzer test and the rolling of the fingerprints and photographing at the local level. She added if this law was changed through these amendments, the fingerprints made at the local level could not be submitted to the central repository maintained by the Department of Justice.

**SEN. HOLDEN** asked what they were doing with the fingerprints. **Brenda Nordlund** answered they were being destroyed since they were not submitted to the Montana Criminal History Record system.

**SEN. HOLDEN** felt this situation did not make sense if the fingerprints were already taken. He asked why they wouldn't be submitted. **Brenda Nordlund** said the Criminal Justice Information Agency cannot photograph or fingerprint someone who has committed a misdemeanor involving a traffic offense, a regulatory or a fish and game offense.

**SEN. HOLDEN** asked why the House of Representatives were disapproving to this amendment. **Brenda Nordlund** felt she didn't explain the amendment very well to the house.

**CHAIRMAN GROSFIELD** asked if these identical amendments were offered in the House Judiciary. **Brenda Nordlund** responded by saying there was an editorial change made on the last line of the amendment due to alcohol concentration.

**CHAIRMAN GROSFIELD** asked if this amendment was offered and voted down or not offered at all. **Brenda Nordlund** said the broader amendment was offered and voted down.

**Closing by Sponsor:**

**REP. STEVE GALLUS, HD 35, BUTTE**, said he and the department failed to educate the House Committee as to what type of database is used, which is a fingerprint-based system and not a name based system. He summarized this country is in the process of standardizing all criminal justice information and in an attempt to gather information, Montana should do its part to utilize a nation wide database.

**HEARING ON HB 191**

**Sponsor:** **REP. STEVE GALLUS, HD 35, BUTTE**

**Proponents:** **Brenda Nordlund, Motor Vehicle Division**

**Opponents:** **Robert Throssell, Montana Magistrates Association**  
**Karen Orzech, Justice of Peace, Missoula**

**Opening Statement by Sponsor:**

**REP. STEVE GALLUS, HD 35, BUTTE**, felt this bill was a fundamental fairness issue because current statute treats minors unfairly when those minors are found in possession and no vehicle was involved during the offense. He said one reason to utilize the Motor Vehicle Division as a central clearing house for M.I.P convictions is because these convictions are often treated as a driving offense even if the offender was not driving or in actual physical control of the vehicle when the offense was committed.

**Proponents' Testimony:**

**Brenda Nordlund** handed out information on HB 191 **EXHIBIT(jus29a03)**. She also handed out a memo **EXHIBIT(jus29a04)**. She explained the results of the 1995 law and minors in possession. She said for the drivers license suspensions they distinguish whether the driver was over the age of 18 or under 18 and they distinguish if the person involved was driving during the offense or not driving at the time of the offense. She felt this system was unfair to use the motor vehicle division as the

central repository for an offense that has nothing to do with driving. This bill would allow the motor vehicle division to not be working with the offenses of M.I.P.s. She handed out information on the Montana Code **EXHIBIT(jus29a05)**.

**Opponents' Testimony:**

**Robert Throssell, Montana Magistrates Association**, explained the numbers of minors in possession and what they are dealing with. He said that this is critical because it offers the judges what type of offender they may be dealing with. He urged the committee to give this bill a do not pass because the motor vehicle division assists in helping with information that is needed to know about the offender.

**(Tape 1; Side B)**

**Karen Orzech, Justice of Peace, Missoula**, said she was worried about the youth, who live with an addictive parent and continue to commit offenses. She felt this bill would hide the fact the youth need intervention from receiving an M.I.P. She said if this bill were to pass, it would not service the youth for the offense that they were subjected to. She gave examples of youth who have gone through her court for M.I.P. offenses and being convicted of alcohol and drug related issues. She said this bill needed to be dealt with and she urged the committee to amend this bill and keep the M.I.P. offense on the driving record at the age of 21.

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** asked if the youth were fingerprinted, how do they keep track of this system for the judges to know. **Brenda Nordlund** said the current law would not allow fingerprinting of these youth.

**SEN. HOLDEN** asked how the fingerprinting and tracking would correlate with the new law that is being presented. **Brenda Nordlund** answered with the amendments included it would not reach these offenders.

**SEN. HOLDEN** asked how they would address the issue of youth going to college with a track record from their home communities. **Brenda Nordlund** said she didn't believe it was the motor vehicle problem, that the courts do not have an automated system in order to track this particular offenses.

**CHAIRMAN GROSFIELD** asked if the youths were not fingerprinted now, why not change that system. **Pam Bucy, Assistant Attorney**

**General**, said the youth court act would prevent them from being fingerprinted, unless they are tried as adults.

**CHAIRMAN GROSFIELD** asked if this was because of a federal regulation or is this the way the Montana statutes read. **Pam Bucy** said the Montana statutes are drafted that way and she believed there were federal laws that apply to this as well.

**SEN. MIKE HALLIGAN** asked about automation and if there was any attempt to deal with that issue. **Robert Throssell** said there was currently a project to automate the courts of limited jurisdiction through guidance of the Supreme Court, but the system is not in place statewide at this current time.

**SEN. GRIMES** asked if there was an automated system of tracking available to the justice of the peace, could this bill be used for a different reason to hold youth accountable. **Karen Orzech** said she didn't expect the automated system to be up and running within the next two to three years. She added it comes before the court on a recommendation right now.

**SEN. HALLIGAN** asked if this information could be available for the Board of Crime Control or if there was another repository available. **Brenda Nordlund** answered the Board of Crime Control does a lot of data collection, but they do the collection after the repository has had the information.

**SEN. JERRY O'NEIL** asked if possession of tobacco was on the driving record. **Brenda Nordlund** said it was not.

**CHAIRMAN GROSFIELD** asked how these youth records affect the insurance industry. **Roger McGlen, Executive Director of Independent Insurance Agents Association**, said he represents the agents around the state and he felt that under the current law the insurance industry is prohibited from using the first offense, but they are allowed to use subsequent offenses. He said they have seen problems with this dealing when the M.I.P. appears on the driving record and it is treated like a driving under the influence conviction by the insurance companies. He explained an incident of a youth who received serious consequences on the insurance rates and he added that M.I.P. convictions are not directly involved with the actual intake of alcohol although they are treated that way.

**CHAIRMAN GROSFIELD** asked if the record the insurance agents receive was clear or does it mention an M.I.P. **Roger McGlen** said when it is included on the record there is no explanation on the motor vehicle driving record of the circumstances of that

conviction. **Brenda Nordlund** answered the current law has different codes that go along with an M.I.P.

**CHAIRMAN GROSFIELD** asked which code would be used in the example **Roger McGlen** explained dealing with insurance agents. **Brenda Nordlund** said with insurance agents and first time offenses of youth, the code would have been under 21 because the other code has a descriptor that is driving under the possession. She said the first M.I.P. usually doesn't show on the driving record because M.I.P. under current law could not be used for insurance underwriting purposes.

**SEN. HOLDEN** asked how they track prior offenses pertaining to tobacco abuse. **Karen Orzech** answered she usually asks the defendant and knows that they are not telling the truth.

**SEN. HOLDEN** asked if they basically are guessing as to whether the defendant is using tobacco or not. **Karen Orzech** said she does ask the defendant if this is their first time in court and if they have had possession of tobacco.

**SEN. HOLDEN** asked if there was a method of determining whether the defendant is on tobacco use and if it is their first time in court. **Karen Orzech** said no, she did not know if there was a way to track for tobacco use or not.

**CHAIRMAN GROSFIELD** asked if insurance rates are going up and as a result of the youths driving records where there is no driving involved how can this be explained. **Karen Orzech** said she is in support of removing this by the age of 21 because in the courts they would be able to tell if the defendant had moved on to more serious crimes and that would appear on a criminal record. Her concerns were attributed with youths that have more than one M.I.P. and involves a car accident whereas parents cover up their child's mistakes.

**Closing by Sponsor:**

**REP. STEVE GALLUS, HD 35, BUTTE**, summarized under current law there are statutes that address these penalties and he asked the committee to not confuse HB 184 with HB 191 saying that they are separate issues. He mentioned that the vast majority of Montana communities will suffer the adverse consequences for clear minority of the few. He said that this bill doesn't not demand justices to take the licenses of youth and they are usually reluctant to sentencing M.I.P.s due to the current statutes. He told of an incident in Butte where a young man was employed with the city waste department and the supervisor could not secure an

insurance policy for this youth to drive the company truck due to offenses on his driving record.

**EXECUTIVE ACTION ON HB 195**

**Motion:** SEN. GRIMES moved HB 195 BE CONCURRED IN.

**Discussion:**

SEN. GRIMES asked if criminal possession of dangerous drugs would include trying a youth and what is the threshold under this code. Pam Bucy, Assistant Attorney General, said this was amended in the house as a felony possession amounts and it doesn't include any misdemeanor crimes.

**Vote:** Motion carried unanimously.

**EXECUTIVE ACTION ON HB 184**

**Motion/Vote:** SEN. HOLDEN moved HB 184 BE CONCURRED IN AS AMENDED. Amendments were passed out in prior hearing EXHIBIT(jus29a06). Motion carried unanimously.

**EXECUTIVE ACTION ON SB 17**

**Motion:** CHAIRMAN GROSFIELD was absent the day of the tie roll call vote, January 18, 2001 he cast his vote as yes on SB 17.  
**Vote:** Motion SB 17 DO PASS carried 5-4 with SEN. DOHERTY, SEN. HALLIGAN, SEN. PEASE AND SEN. GRIMES voting no.

**Miscellaneous Discussion:**

SEN. GRIMES wanted the committee to be aware of issues regarding SEN. BOHLINGER'S bill regarding penalties for prostitution cases. He talked with the FBI and they didn't feel a task force would be useful to have right now. He mentioned the convictions they have had and there was no reports on the street right now.

SEN. HOLDEN asked if any amendments were being prepared for SEN. O'NEIL'S Bill 242 dealing with building codes. Valencia Lane said she had only seen the amendments handed out by Alec Hansen, Montana League of Cities and Towns.



**ADJOURNMENT**

Adjournment: 12:00 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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CECILE TROPILA, Secretary

LG/CT

**EXHIBIT (jus29aad)**